U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

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[redacted]

DATE: JAN 12 2012 OFFICE: TEXAS SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a mathematics professor. At the time he filed the petition, the petitioner was a postdoctoral instructor at [redacted]. The petitioner has since begun working at [redacted][1] The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

At the outset of this proceeding, the petitioner had legal representation. In correspondence dated November 2, 2010, the petitioner made it clear that he had dismissed his attorney. Therefore, the AAO will refer to the attorney as "prior counsel."

On appeal, the petitioner submits a statement and several exhibits, most of them previously submitted.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –
>
> > (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

[1] That employer filed a Form I-140 petition on the alien's behalf, with receipt number [redacted], seeking to classify the alien as an outstanding professor or researcher. The director approved that petition on September 16, 2011. That petition is not before the AAO on appeal or certification, and the AAO will not comment on its merits here.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now U.S. Citizenship and Immigration Services (USCIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation (*NYSDOT*), 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. Next, the petitioner must show that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available United States worker having the same minimum qualifications.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The intention behind the term "prospective" is to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The AAO also notes that the regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner filed the Form I-140 petition on March 8, 2010. In an accompanying statement, prior counsel stated that the petitioner's "groundbreaking work in advanced mathematics is vital to improving the **U.S. economy, U.S. education, U.S. health care,** and **U.S. national security**" (emphasis in original). Prior counsel's statement consisted almost entirely of quotations from seven witness letters that accompanied the petition. The letters more or less follow a common theme, indicating that the petitioner's mathematical modeling brings order to complex situations once thought to be unpredictable, with significant implications for the economy (in terms of competition for resources), national security (predicting potential targets for terrorism) and health care (plotting cell behavior and identifying potential epidemics). The witnesses then asserted that, as a highly skilled educator, the petitioner will also make valuable contributions toward training the next generation of high-level mathematicians.

[redacted] stated:

> I had the privilege of teaching [the petitioner] as an undergraduate and even at that early stage of his career he showed impressive abilities in research in applied mathematics. . . .
>
> [The petitioner] completed his Ph.D. at the [redacted] where he embarked on some of the most innovative mathematical research being done worldwide. His work is founded upon complexity science, which proposes new multidisciplinary ways for predicting behavior or occurrences through the use of advanced mathematical models. This research is extremely innovative for two reasons: (1) it moves beyond traditional linear thinking and logic, proposing entirely new ways to assess probability and patterns; and (2) it is inherently interdisciplinary, in the ways in which it is applicable to a host of diverse situations and subject areas.
>
> [The petitioner] has done vital initial research examining the ways in which complexity science can be used to predict the behavior of parties competing for limited resources. . . .
>
> What is innovative about [the petitioner's] work in this area is that it breaks new ground in applied mathematics, because it introduces a conceptual model that moves beyond traditional game theory. This is a significant contribution to our field worldwide. Secondly—and of equal importance—[the petitioner's] work provides exciting new tools for social scientists to model real-life situations where nations or interest groups compete with one another for resources or items of value subject to market forces and redistribution.
>
> . . . The computer programs based upon his models will allow leaders in U.S. industry and government to more accurately predict where critical shortages may occur, and

how such shortages and market competition can be managed optimally to benefit the U.S. public. . . .

[The petitioner's] abilities as a professor of mathematics also comprise an essential contribution to improving U.S. education. While his personal research has impacted the wider mathematics field already, there will be an even more exponential influence on 21st century American students as a result of his undergraduate and graduate teaching.

[redacted] "had the privilege of collaborating with [the petitioner] in examining how complexity science can provide new means of analysis and entirely new frameworks for evaluating data in the social sciences field." [redacted] stated:

[The petitioner] is pioneering the use of advanced mathematical modeling to simulate a number of different situations that were previously believed to be completely unpredictable and random. The benefits of his mathematical modeling extend into some of the most critical areas of concern to the U.S. Government and the U.S. public.

[The petitioner] has used advanced mathematical modeling to demonstrate how different actors can be expected to make decisions when engaged in competition for limited resources that must somehow be allocated between them. This is an area in which I have collaborated with [the petitioner], and his mathematical contributions to the construction of an entirely new model of analysis were crucial. . . .

[The petitioner's] research in which he has introduced new mathematical models to account for the behavior of multiple opponents who compete for limited resources is of great importance to U.S. economic planners. . . . [The petitioner's] groundbreaking theoretical work will be absolutely vital for improving long-term U.S. planning and policymaking.

. . . One of the great strengths of [the petitioner's] advanced mathematical modeling is that it provides the means by which future conflicts or areas of competition can be predicted and simulated by computer. This ability will allow U.S. policymakers the opportunity not only to avert such future conflicts but also to explore a wide range of U.S. responses that can be tested in advance through computer simulation.

. . . Applying these tools to U.S. national security concerns, U.S. law enforcement and military officials will have access to entirely new ways of tracking terror cells and predicting when and where terror threats to the U.S. public may evolve. . . .

There is also great urgency in facilitating [the petitioner's] career as a mathematics professor in the United States. In that area alone he has done remarkable work at

[redacted] in enhancing the mathematical education of the next generation of U.S. citizens and leaders.

[redacted] where the petitioner worked in the summer of 2007, stated that the petitioner's

> initial work examining how multiple actors compete for limited resources in situations that allow for both conflict and cooperation earned him international recognition, and brought him to the attention of [redacted].
>
> [The petitioner] has emerged as one of a new generation of theoretical mathematicians who are engaged in some of the most cutting edge research being done anywhere in the world. [The petitioner] brings remarkable skills to this endeavor. His work is strikingly interdisciplinary, with revolutionary implications for research in biology, pharmaceutical medicine, economics, political science, and sociology. . . .
>
> [The petitioner's] training for such work sets him apart from countless of his professional colleagues.

[redacted] stated that the petitioner's "research has the potential to strengthen expertise with mathematical models in several vital areas of U.S. national interest, and [his] pedagogical skills have the potential to play a critical role in closing the complexity-science education gap."

[redacted] discussed the general potential of "[t]he kind of advanced mathematical modeling being explored by [the petitioner]," but did not identify any specific contributions by the petitioner in that area.

[redacted] stated:

> I have known and worked with [the petitioner] for about two years now. . . . I was introduced to [the petitioner's] mathematical work through . . . [his] groundbreaking study in the field of complex systems analysis entitled '[redacted] In this article, [the petitioner] introduced a novel new approach for predicting how multiple actors will behave in situations where both conflict and cooperation are possible. His work was particularly important in that it offered a mathematical framework that can be applied to real-world situations where nations or interest groups compete with one another for scarce resources.

[redacted], asserted that the petitioner's "mathematical modeling . . . can accommodate tremendously complex and

seemingly unrelated topics, [and therefore] can yield patterns of prediction even for systems typified by catastrophes and seeming instability."

The above witnesses claimed that the petitioner's work has "revolutionary" implications across a broad variety of important fields, but no witness identified even a single example of a seemingly unpredictable event that the petitioner successfully predicted using his mathematical models. They simply claimed that the petitioner's work would surely lead to such predictions at some unspecified point in the future. Without verified results, it is premature at best to assert that the petitioner's work will successfully predict epidemics, economic upheaval, international conflict and terrorist attacks in a way that will permit their prevention.

The petitioner submitted copies of his published work and evidence of conference presentations, as well as a copy of an article in which Ukrainian researchers [redacted] cited one of the petitioner's articles.

On June 14, 2010, the director issued a request for evidence (RFE), instructing the petitioner to submit further documentation to meet the guidelines set forth in *NYSDOT* and to establish the existing impact of the petitioner's work. The director specifically requested evidence of the petitioner's "patents and copyrights," "grant proposals," "peer reviewed articles," "performance evaluations for the last five to ten years," "work that has been evaluated in independent journals," and "awards for his work in the field" accompanied by first-hand evidence establishing their significance, the criteria for the awards, and so on.

In response, the petitioner maintained that his "research work . . . has been very enthusiastically received by colleagues in numerous different disciplines." The petitioner noted that his initial witness letters showed that his work "has influenced the work of economists, computer engineers, political scientists, social scientists and of course, mathematicians" (emphasis in original). This statement more or less accurately describes the fields in which the petitioner's initial witnesses work, but many of the witnesses earned degrees in mathematics and perform mathematically-oriented work in other university departments. Therefore, the witnesses are not quite as diverse as the petitioner implied. Furthermore, most of the witnesses have actively collaborated with the petitioner, and therefore their statements do not reflect influence or impact outside of the petitioner's own circle of collaborators and the institutions where he has worked. Significantly, the witnesses all asserted that the petitioner's work would have real-world benefits outside of academia, but all of the witnesses work in academia.

The petitioner submitted copies of three articles citing his work. One of the articles is a copy of the citing article submitted previously. One author, [redacted], wrote or co-wrote all three articles. These multiple citations by a single researcher cannot demonstrate that the petitioner's published work has generated widespread interest or impact. (In his own work, the petitioner acknowledged that he "developed [his] model based on some recent papers by [redacted].")

Even while documenting citations of his work, the petitioner claimed: "Theoretical work on complex system modeling does not lend itself to the same kinds of 'achievement indicators' that other disciplines usually feature, such as frequent publishing or citations." The petitioner submitted no evidence to support this claim. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

Furthermore, the petitioner's witness letters have heavily emphasized claims that the petitioner's work will yield significant benefits to the economy, public health, national security and other areas. The petitioner effectively contradicted those claims, by asserting that his work is "theoretical," the beneficial effect of which "does not lend itself" to direct measurement. The petitioner did not show that what he himself called a "very new mathematical approach" has had a significant, measurable impact at either the theoretical or practical level.

The petitioner submitted three new letters, one of which is from a previous witness. [redacted] asserted that one of the petitioner's published articles "was a groundbreaking article in the Complexity Science field because it offered a new mathematical model for how to predict behavior patterns between multiple opponents who must necessarily compete for limited goods or resources." [redacted] claimed that the petitioner "has had an influence upon his field as a whole . . . as well as fields such as conflict resolution, economic planning, counter terrorism efforts, etc." The petitioner submits no evidence to establish any consensus that his article is "groundbreaking" or that his model is in widespread use in the above-named fields.

[redacted] stated that the petitioner's "research is of tremendous practical value to the United States," but, like every other witness, failed to establish any implementation of the petitioner's work at the practical level. Also like other witnesses, [redacted] then turned his attention to a shortage of math teachers.

[redacted] attested to "the impact that [the petitioner] has had upon the evolving field of Complexity Science." [redacted] asserted that the applications of the petitioner's model "reach far beyond the mathematics field itself," and repeated the same claims about potential applications with no specified, concrete examples.

The petitioner submitted evidence to show that a previously submitted article is now part of a book, [redacted] A note in an unidentified hand referred to this title as the "most recent book publishing [the petitioner's] research" (emphasis in original). The term "most recent book" implies earlier books, but the record neither identifies them nor confirms their existence.

The petitioner submitted a copy of a December 2009 invitation to peer-review a conference paper, and an April 2010 "form" letter thanking the unnamed recipient "for [his] time and concentration during triage judging last month for [redacted] (identified as "a contest for

high school students"). The petitioner submitted nothing to show how he came to be selected for these functions. The materials are not self-evident proof that his reputation or influence led to his invitation to review a paper or assist with a high school mathematics competition.

The petitioner submitted background materials regarding a shortage of mathematics and science teachers at the elementary and secondary levels. The petitioner failed to explain the relevance of these materials. The petitioner intends to teach at the college level, and his initial submission contained no indication that his prospective students were teachers in training. Furthermore, a shortage of qualified workers in a given field does not constitute grounds for a national interest waiver. Given that the labor certification process was designed to address the issue of worker shortages, a shortage of qualified workers is an argument for obtaining rather than waiving a labor certification. *NYSDOT* at 215, 218.

The petitioner submitted evidence that he has received positive evaluations from his students (apparently confusing those evaluations with the "performance evaluations" requested in the RFE). These evaluations attest to his skills as an educator, but the petitioner has not shown that he stands out as an educator on a national scale to an extent that would warrant a national interest waiver. While education, as a whole, serves the national interest, classroom instruction by a single teacher lacks national scope. *Cf. id.* at 217 n.3. It may be in the overall national interest to reduce a shortage of math teachers, but adding one teacher to the work force would have a negligible effect on that shortage, and the petitioner has not explained how he, as one math teacher, would affect that shortage more than one other math teacher. Congress has created no blanket waiver for math instructors at the elementary, secondary or university levels.

The director denied the petition on October 6, 2010, stating that the petitioner had failed to establish that his work has had the impact and influence that he and his witnesses had claimed. The director also disputed the intrinsic merit of the petitioner's work. The petitioner contests this conclusion, and the AAO agrees with the petitioner that mathematical research and instruction is a field of substantial intrinsic merit.

On appeal, the petitioner asks the AAO to remand the matter to the director for issuance of a new RFE, because the director's June 2010 RFE was "misleading." For instance, the director requested evidence of "influence on the beneficiary's file as a whole." In context, it is fairly clear that the director meant to write "field" rather than "file." This typographical error did not result in an RFE so incoherent that the petitioner had no reasonable hope of addressing the director's concerns.

The petitioner protests: "I provided the requested evidence, which was summarily deemed deficient, but with no explanation of why *the requested evidence* proved useless." The director did not state that submission of the evidence listed in the RFE would guarantee approval of the petition. Rather, the director requested such evidence to establish the extent of the petitioner's influence and reputation. Given numerous witnesses' claims that the petitioner's work has already had a significant impact on several disparate fields, evidence should be available from competent sources in all of those fields.

With respect to the witness letters in the record, the Board of Immigration Appeals (BIA) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The BIA also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

The opinions of experts in the field are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as we have done above, evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)).

In reference to the above principle, the petitioner states:

> I agree that support statements made by professional acquaintances should be *corroborated* by documentary evidence in the record. Thus, I will do *two things* to buttress the letters of endorsement. First, I will corroborate the statements of the supporters with substantial documentary evidence. Separately, I will bring **independent contemporaneous statements** about my work.

It is not clear when the petitioner "will do" what he describes above. No new evidence accompanied the filing of the appeal itself, or the petitioner's supplementary submission a month later. It appears that the petitioner means to say that he will submit more evidence once the director issues a new RFE. The record, however, does not support the petitioner's assertion that a new RFE is necessary or would be productive. It is the petitioner's responsibility to submit evidence that he believes will support his petition. If he had such evidence in his possession, but withheld it for future submission, then he made the choice not to make it available to the AAO for review. If, on the other hand, he did not yet have such evidence, the AAO will not remand a petition based on the petitioner's claim that he will attempt to secure more evidence at a later date.

The petitioner, referring to himself in the third person, states: "The best evidence of whether [the petitioner's] accomplishments . . . have had an influence or impact on the field of mathematics can be seen in his articles' having been presented at international conferences, his being asked to peer-

review articles in applied mathematics, and, of course, in citation to his work" (references omitted). The petitioner, however, has documented a minimal history of publication, presentation and citation. Furthermore, numerous witnesses had claimed that the petitioner's work is not merely of theoretical importance. Rather, they claimed, the petitioner's work is valuable because of its implications for the economy, national security and public health. The sheer number of witnesses making such claims, however, cannot compensate for the absence of evidence that the petitioner's work has, thus far, had any real-world practical effect on the economy, national security or public health. The assertion that the petitioner's work will eventually lead to such impact cannot suffice, no matter how many people repeat that assertion. The waiver requires a past history of demonstrable achievement with some degree of influence on the field as a whole. *NYSDOT* at 219 n.6. Instead, the petitioner has offered predictions that such influence will eventually become evident.

Among copies of previously submitted materials, the petitioner submitted documentation about [redacted] indicating that the 2009 competition involved 36 judges. A list of those judges shows that fully one-third of the judges – 12 of the 36 – were from [redacted] including one of the lead judges. All 11 of the other [redacted] representatives, including the petitioner, participated as "triage" judges at a preliminary stage of the competition. This lopsided representation of [redacted] mathematicians suggests that the petitioner's inclusion in the 2009 competition (and presumably the 2010 competition documented previously) had more to do with his position at [redacted] than with any professional reputation he had earned as an individual.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.